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MAR 27 1997

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Amendment of Part 1 of the
Commission's Rules --)

Competitive Bidding Proceeding)

WT Docket No. 97-82

COMMENTS OF MOUNTAIN SOLUTIONS, LTD., INC.

Mountain Solutions LTD., Inc. ("Mountain Solutions"), by its counsel and pursuant to 47 C.F.R. § 1.419, hereby files these brief Comments in response to the Commission's *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making* in WT Docket No. 97-82.¹ Mountain Solutions' Comments focus on just one issue raised in the *NPRM*, namely the Commission's proposal to modify Section 1.2110(e) of its rules. This rule presently provides that a winning auction bidder who fails to make a timely *second* down payment is determined to have automatically defaulted on its licenses, and is also subject to the Commission's default penalties.²

Mountain Solutions supports the Commission's tentative conclusion to modify the subject rule to provide for some flexibility in enforcing second down payment deadlines for auction winners who previously have made a timely first down payment.³ Mountain Solutions has a vested interest in the Commission's resolution of this particular issue because

¹ *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making in WT Docket 97-82*, FCC 97-60, released February 28, 1997 (hereinafter "*NPRM*").

² See *NPRM* at ¶¶ 60-63.

³ See *NPRM* at ¶ 61.

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Mountain Solutions has a pending request for waiver of Section 24.711(a)(2) of the Commission's rules, pertaining to 10 C Block broadband PCS licenses for which Mountain Solutions was the high bidder at auction, and for which it timely met its first down payment deadline.⁴

Based on its experience in participating in the FCC's broadband PCS Entrepreneur Block auction, Mountain Solutions strongly supports the Commission's proposal to allow late second down payments and final payments, provided a late fee is also paid. However, Mountain Solutions urges the Commission to adopt a 30 day, rather than 10 business day, late payment period. As the Commission itself recognizes, and as Mountain Solutions can attest, "applicants may encounter certain difficulties when trying to arrange financing and make substantial payments under strict deadlines."⁵ Often, these difficulties are completely outside the control of the entrepreneur, and can occur despite the entrepreneur's diligent business planning and best efforts. In addition, ten business days usually is insufficient to address and resolve unforeseen and potentially complex financial complications in many business scenarios, even though *immediate* curative action is undertaken by the auction winner.

However, the majority of commercial lending and financial problems can be settled within a one month time frame. Furthermore, if an auction winner truly has no realistic

⁴ Specifically, Mountain Solutions was the high bidder for ten PCS C block BTA licenses. Mountain Solutions timely made its first down payment of approximately \$1.2 million by May 15, 1996. However, Mountain Solutions was unable to meet the September 24, 1996 second down payment deadline, and instead filed an *Emergency Petition for Waiver*, which was supplemented on October 17, 1996 and February 12, 1997. The Commission has not yet ruled on Mountain Solutions' *Emergency Petition for Waiver*.


⁵ *NPRM* at ¶ 61.

financing arranged prior to the second down payment deadline, it is *extremely* unlikely that the critical financing arrangements will be finalized in the two additional weeks provided for under Mountain Solutions' 30 day late payment proposal. Such a flexible late payment approach is warranted in situations, such as Mountain Solutions', where the auction winner already has made a sizeable and timely payment to the government, *and* incurred significant federal government debt.

Mountain Solutions also supports the Commission's tentative conclusion to impose an automatic five percent late payment fee. While not overly draconian, a five percent late payment fee presents auction winners with a significant incentive to make timely payments. In Mountain Solutions' situation, a five percent late payment would equate to approximately a \$60,000 late payment, a not insignificant sum for a true entrepreneur. Most importantly however, a five percent late payment fee is consistent with commercial practices.

ACCORDINGLY, Mountain Solutions encourages the Commission to modify Section 1.2110(e) of its rules to provide for more flexibility for auction winners that have already made timely, significant payments to the federal government.

Respectfully submitted,
MOUNTAIN SOLUTIONS LTD., INC.

By: 
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Its Counsel

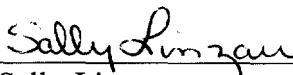
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CERTIFICATE OF SERVICE

I, Sally Linzau, a secretary in the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that I have on this 27th day of March, 1997, had copies of the foregoing "Comments of Mountain Solutions, Ltd., Inc." mailed by U.S. first class mail, postage prepaid, to the following:

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March 27, 1997

*Via Hand Delivery